IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.293 OF 2004
IN
WRIT PETITION NO. 6461 OF 1995

Chairman, Sharda Shikshan Mandal & anr. Appellants
vs.
Sau.Anita Anand Gavarshettiwar Respondent

Mr.M.S. Karnik for the appellants.

Mr.Abhay Patki i/b. Mr.A.S.Peerzada for the respondent.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 14th March 2005

P.C.

Heard Mr.M.S.Karnik, the learned counsel for the appellants.

2. Threefold contention is advanced by the learned counsel for the appellants. Firstly, he submitted that the appeal preferred by the respondent herein before the School Tribunal was barred by time and delay aspect being material was overlooked by the learned Single Judge while setting aside the order of the School Tribunal. Secondly, the learned counsel submitted that the respondent represented to the management that she belongs to N.T.category but the fact was that she was not N.T. category candidate and, therefore, her appointment itself was bad in law. Lastly, the learned

counsel submitted that at the time of the appointment, the respondent was 32 years of age and, therefore, she was overage at the time of appointment and her appointment is illegal. In the premise of the aforesaid three contentions, the learned counsel submitted that the learned Single Judge was not justified in setting aside the order of the School Tribunal.

3. None of the contentions has any substance. As regards the first contention relating to delay, the learned counsel for the appellants candidly conceded that this aspect was not pressed before the learned Single Judge. Obviously, the learned Single Judge was not expected to go into the aspect which was not pressed before him. The first contention is, accordingly, overruled.

4. As regards the second contention, suffice it to say that the present appellants miserably failed to show that the post against which the respondent was appointed was the post reserved for N.T.category. No material whatsoever was produced by the appellants before the learned Single Judge in this regard. In paragraphs 6 and 7 of the impugned order, the learned Single Judge observed thus:

> "6. Now in the light of this rival submissions the record of the case if perused

it becomes clear that so far as appointment order of the Petitioner dated 29th May, 1986 is concerned, it does not show that the appointment of the petitioner was against the post which is reserved for Nomadic Tribe nor does it show that the post against which the petitioner was appointed by order of 29th May, 1986 was a post reserved for Nomadic Tribe. It was for the management to produce the advertisement before the School Tribunal but that document was never produced by the Management. If it was the case of the Management that the petitioner was appointed against a post reserved for Nomadic Tribe because she represented to the Management that she is a candidate belonging to the Nomadic Tribe it was for the Management to produce the application made by the petitioner for the job. Perusal of the appointment order dated 29th May, 1986 shows that there reference has been made to the application dated 13th May, 1986 submitted by the petitioner for that job. This application has also not been produced by the Management before the School Tribunal. According to the appointment order dated 29th May, 1986 the appointment was on probation for a period prescribed by the Act and as per the provisions of the Act an employee gets automatically confirmed in the post on completion of the maximum period of probation. Therefore, if the case of the Management is to be accepted that the petitioner was appointed on probation because she represented that she belongs to Nomadic Tribe then the Management would have demanded production of caste certificate from the petitioner before she completed probation period but there is no correspondence seems to have been produced by the Management that at any time and in any case before 3rd June, 1988 any such caste certificate was demanded by the Management from the petitioner. Even the bio data on which reliance has been placed by the Management is of the year 1991/92 i.e. much after the petitioner became a permanent employee.

7. It is further to be seen here that even if it is assumed that the Management is right in contending that petitioner was appointed against a post reserved for Nomadic Tribe because she made a representation that she belongs to Nomadic Tribe then the services of

> the petitioner were being terminated by the Management for securing the appointment by misrepresentation and therefore before terminating services of the petitioner for such a charge it was obligatory on the Management to comply with the principles of natural justice. Admittedly, the services of the petitioner have been terminated without issuing any show cause notice and without giving petitioner an opportunity of being heard. It is further to be seen here that according to the provisions of the Act and the Rules even for terminating the services of a temporary teacher one month notice or pay in lieu of notice has to be given. The order dated 30th April, 1994 was for terminating the services of the petitioner from the date of the order itself. The petitioner was a permanent employee and therefore three months notice is mandatory as per the provisions of the Act and the Rules. Therefore, looking at the matter from any point of view the order terminating the services of the petitioner was per se illegal and therefore in my opinion the School Tribunal was not at all justified in dismissing the appeal filed by the petitioner. Really speaking the appeal filed by the petitioner should have been allowed."

5. We do not find any infirmity in the consideration of the matter by the learned Single Judge.

6. The last contention of the learned counsel for the appellants that the respondent was overage at the time of appointment also has no substance. Needless to say that it were the appellants who appointed the respondent on the post of primary teacher. There is nothing on record to show that the respondent gave incorrect date of birth or misrepresented to the appellants about her age. In any case, the termination of the permanent employee without following any legal procedure on the

assumed ground, if any as canvassed by the learned counsel for the appellants that the respondent was overage cannot be justified.

7. The appeal has no merit and is dismissed in limine.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)